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Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicants:** Brian Thomas Campbell, *et al.*

**Serial No.:** 10/527,044

**Case No.:** MS0010P

**Filed:** March 8, 2005

**For:** FUSED HETEROBICYCLO SUBSTITUTED PHENYL  
METABOTROPIC GLUTAMATE-5 MODULATORS

**Art Unit:**

1626

**Examiner:**

Freistein, Andrew

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**COMMUNICATION**

This Communication supplements the Amendment filed on January 20, 2006.

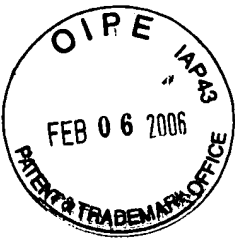
**Non-Statutory Double Patenting**

Claims 1, 8, 12, 13-16, 22 and 26 are provisionally rejected under the judicially created doctrine of double patenting over co-pending application 10/497,452. Applicants submit herewith a terminal disclaimer, executed by Merck & Co., Inc. patent counsel David L. Rose, disclaiming any patent term extending beyond the term of any patent granted based on co-pending application 10/497,452. In view of the attached terminal disclaimer, Applicants request reconsideration and withdrawal of the provisional rejection under the judicially created doctrine of double patenting.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date appearing below.

MERCK & CO., INC.

By A. Reynolds Date 1/31/06




Attached to the Amendment submitted January 20, 2006 was a terminal disclaimer executed by the undersigned. However, it has come to the attention of the undersigned that the only individuals authorized to execute a terminal disclaimer on behalf of Merck & Co., Inc. are those listed on Corporate Resolution No. 5, including David L. Rose, Counsel, Patents. Therefore, it is requested that the Terminal Disclaimer attached here be accepted, and that the terminal disclaimer filed January 20, 2006 be disregarded. The undersigned contacted Examiner Freistein via telephone on January 30, 2006 to advise him of the situation outlined above.

If there are any issues outstanding after consideration of this Amendment, the Examiner is invited to contact the undersigned to expedite prosecution of this case.

Attorney for Applicants can be reached at the telephone number and address below. Correspondence should continue to be sent to the address below. Although no fees are believed to be due, any fees occasioned by this paper or any fee overpayments should be charged or credited to Deposit Account **13-2755**.

Respectfully submitted,

By 

David Rubin  
Reg. No. 40,314  
Attorney for Applicants

MERCK & CO., Inc.  
P.O. Box 2000  
Rahway, New Jersey 07065-0907  
(732) 594-2675

Date: January 31, 2006



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Brian Thomas Campbell, et al.

Group No.: 1626

U.S. Serial No.: 10/527,044

Filed: March 8, 2005

Examiner: Freistein, Andrew

For: FUSED HETEROBICYCLO SUBSTITUTED PHENYL  
METABOTROPIC GLUTAMATE-5 MODULATORSCommissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450TERMINAL DISCLAIMER TO OBVIATE  
A DOUBLE PATENTING REJECTION  
[37 CFR 1.321]

I, David L. Rose, residing at  
126 East Lincoln Avenue, Rahway, New Jersey 07065-0907, am a representative  
of the assignee identified below, empowered to act on its behalf, pursuant to attached  
Corporate Resolution No. 5, dated 04/23/2002.

The assignee, Merck & Co., Inc., certifies  
that it is the assignee of the entire right, title and interest in the above-identified  
patent application by virtue of an Assignment from the inventor(s) in the aforesaid  
patent application, which was

☒ recorded in the United States Patent & Trademark Office on Reel(s) 016752  
Frame(s) 0286 on 09/08/2005,

☐ was forwarded for recording on \_\_\_\_\_, with a copy of the recordation form  
and assignment attached hereto, or

☐ is being concurrently forwarded for recording under separate cover, with a copy of the  
recordation form and assignment attached hereto.

The aforesaid assignment establishes the ownership in the assignee of the above-identified  
application pursuant to 37 CFR 3.73(b).

The undersigned has reviewed all of the evidentiary documents in the chain of title of the  
above-identified patent application, and the undersigned certifies that, to the best of the  
undersigned's knowledge and belief, title is in the assignee named above.

I hereby disclaim the terminal part of the statutory term of any patent granted on the  
above-identified application, which would extend beyond the expiration date of the full  
statutory term of:

☐ United States Patent No. \_\_\_\_\_, or as presently shortened by any terminal  
disclaimer,

☒ Any patent granted on application serial number 10/497,452,

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and hereby agree that any patent so granted on the above-identified application shall be enforceable on, for and during such periods that the legal title to said patent shall be the same as the legal title to:

☐ United States Patent No. \_\_\_\_\_,

☒ Any patent granted on application serial number 10/497,452 \_\_\_\_\_,

this agreement to run with any patent granted on the above-identified application and to be binding upon the grantor, its successors or assigns.

Petitioner does not disclaim any terminal part of any patent granted on the above-identified application prior to the expiration date of the full statutory term of:

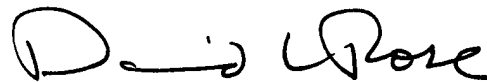
☐ United States Patent No. \_\_\_\_\_, or as presently shortened by any terminal disclaimer,

☒ Any patent granted on application serial number 10/497,452 \_\_\_\_\_,

in the event that it later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is otherwise terminated prior to expiration of its full statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

The Commissioner is requested to charge Account No. 13-2755 the sum of \$130.00 and any fee deficiency required by this paper. A duplicate of this disclaimer is attached.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.



Disclaimant David L. Rose

Patent Counsel \_\_\_\_\_

Title

Merck & Co., Inc.

Patent Dept., RY60-30

P.O. Box 2000

Rahway, New Jersey 07065-0907

Telephone No. (732) 594-4777 \_\_\_\_\_

In Duplicate  
Attachs.

Date: 01/31/2006



## General Corporate Resolution #5

### PATENT MATTERS

RESOLVED, that any of the following:

Richard T. Clark-Chief Executive Officer and President  
Kenneth C. Frazier-Senior Vice President and General Counsel  
Joseph F. DiPrima-Vice President and Assistant General Counsel  
Paul D. Matukaitis-Vice President and Assistant General Counsel  
William Krovatin-Counsel, IP Litigation  
Edward W. Murray-Counsel, IP Litigation  
Charles M. Caruso-Counsel, International  
Valerie J. Camara-Counsel, Patents  
Mark R. Daniel-Counsel, Patents  
Joanne M. Giesser-Counsel, Patents  
Anthony Rollins-Counsel, European Patents  
David L. Rose-Counsel, Patents  
Jack L. Tribble-Counsel, Patents  
Melvin Winokur-Counsel, Patents  
Donna L. Margiotto-Senior Manager, Patent Administration

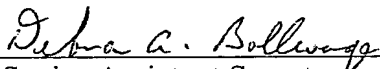
are authorized to execute and to revoke on behalf of Merck & Co., Inc. and its affiliates (including subsidiaries) the following documents relating to patent matters:

Powers of attorney as fully in law as may be necessary and proper in connection with the acquisition, registration, maintenance and enforcement of patents and applications for patents, including powers of attorney relating to the prosecution or defense of patent rights before courts of law or other governmental tribunals, agencies or departments; affidavits and declarations; and any other documents which are necessary and proper for the acquisition, registration, maintenance, litigation and protection of patents.

CERTIFICATION

I, Debra A. Bollwage, Senior Assistant Secretary of Merck & Co., Inc. (the "Company"), a corporation duly organized and existing under the laws of the State of New Jersey, do hereby certify that the attached, presently in full force and effect, is a true and correct copy of General Corporate Resolution #5, Patent Matters, as amended by the Board of Directors of said Company at a meeting duly called and held on May 24, 2005.

IN WITNESS WHEREOF, I have hereunto subscribed my signature and affixed the seal of the Company this 27<sup>th</sup> day of June 2005.

  
\_\_\_\_\_  
Senior Assistant Secretary

(SEAL)